

04 NCAC 16G .0311 REQUIRED PROVISIONS IN PLAN OF CONVERSION

The plan of conversion shall:

- (1) Provide that the converting savings institution shall issue and sell its capital stock at a total price equal to the estimated pro forma market value of the stock in the converted savings institution, based on an independent valuation, as provided in Rule .0717 of this Subchapter.
- (2) Provide that each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase capital stock. Subscription rights shall be allocated among the eligible account holders on an equitable basis in an amount not greater than the maximum purchase limitation established for the public offering or the direct community offering. The plan of conversion shall provide a comprehensive description of this allocation including a detailed description of the allocation in the event of an oversubscription of the capital stock. In the event of an oversubscription, shares shall be allocated on an equitable basis that is related to the amount of the subscriber's qualifying deposits.
- (3) Provide that nontransferable subscription rights to purchase capital stock received by executive officers and directors of the applicant and their associates, based on their increased deposits in the applicant savings institution in the one-year period preceding the eligibility record date, shall be subordinated to all other subscriptions involving the exercise of nontransferable subscription rights to purchase shares pursuant to Item (2) of this Rule.
- (4) In plans involving an eligibility record date that is more than 15 months prior to the date of the latest amendment to the application for conversion filed prior to the Commissioner of Banks' approval, provide that a supplemental eligibility record date shall be determined whereby each supplemental eligible account holder of the applicant shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount related to his or her respective qualifying deposits.
 - (a) Subscription rights received pursuant to Item (4) of this Rule shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to Items (2) and (3) of this Rule.
 - (b) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with Item (2) of this Rule shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this Item.
 - (c) In the event of an oversubscription for supplemental shares pursuant to this Item, shares shall be allocated among the subscribing supplemental eligible account holders on an equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.
- (5) Provide that voting members who are not either eligible account holders or supplemental eligible account holders shall receive, without payment, nontransferable subscription rights to purchase capital stock on an equitable basis defined in the plan of conversion. Subscription rights received pursuant to this Item shall be subordinated to all rights received by eligible account holders and supplemental eligible account holders to purchase shares pursuant to Items (2), (3), and (4) of this Rule. In the event of an oversubscription of capital stock pursuant to this Item, shares shall be allocated among the subscribing voting members on such equitable basis as may be provided in detail in the plan of conversion.
- (6) Provide that any shares of the applicant not sold to persons with subscription rights shall either be sold in a public offering through an underwriter or directly by the applicant in a direct community offering, subject to the applicant demonstrating to the Commissioner of Banks the feasibility of the method of sale and of conditions as may be provided in the plan of conversion. Conditions may include the following:
 - (a) limiting purchases in the public offering or the direct community offering by any person together with any associate or group of persons acting in concert to a percentage of the total offering of shares not exceeding five percent; except that:
 - (i) any one or more tax-qualified employee stock benefit plans of the applicant may purchase in the aggregate not more than ten percent of the total offering of shares and shall be entitled to purchase that amount regardless of the number of shares to be purchased by other parties; and
 - (ii) that shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with other shares purchased directly by or otherwise attributable to that person.

- (b) requiring that orders for stock in any public offering or direct community offering shall first be filled up to a maximum of two percent of the conversion stock per order and thereafter remaining shares shall be allocated on an equal number of shares basis per order until all orders have been filled;
 - (c) requiring that stock to be offered and sold in the public offering or the direct community offering shall be offered and sold in a manner requiring that will achieve the widest distribution of the stock; or
 - (d) any direct community offering by the applicant shall give a preference to a person residing in the counties in which the applicant has an office.
- (7) Provide that the number of shares that any person together with any associate or group of persons acting in concert may subscribe or purchase in the conversion shall not exceed five percent of the total offering of shares, except that any one or more tax-qualified employee stock benefit plans of the applicant may purchase in the aggregate not more than 10 percent of the total offering of shares. Shares held by one or more tax-qualified or non-tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person. For purpose of this Item the members of the converting savings institution's board of directors shall not be deemed to be associates or a group of persons acting in concert solely as a result of their board membership.
- (8) Provide that for a period of three years following the conversion no executive officer or director or any associate of an executive officer or director shall purchase without the prior written approval of the Commissioner of Banks the capital stock of the converted savings institution except from a broker or dealer registered with the Secretary of State of North Carolina or the Securities and Exchange Commission. This provision shall not apply to negotiated transactions involving more than one percent of the outstanding capital stock of the converted savings institution or to purchases of stock made by and held by any one or more tax qualified or non-tax-qualified employee stock benefit plans of the applicant that may be attributable to executive officers or directors.
- (9) Provide that the sales price of the shares of capital stock to be sold in the conversion shall be a uniform price and specify the underwriting and other marketing arrangements to be made to assure the sale of any shares not sold in the subscription offering.
- (10) Provide that each deposit account holder of the converting savings institution shall receive, without payment, a deposit account or accounts in the converted savings institution equal in amount to the value of the account holder's deposit account or accounts in the converting savings institution.
- (11) Provide for the establishment and maintenance of a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in the event of a subsequent complete liquidation of the converted savings institution.
- (12) Provide for an eligibility record date that shall be not less than 90 days prior to the date of adoption of the plan by the converting savings institution's board of directors.
- (13) Provide that the holders of the capital stock of the converted savings institution shall have exclusive voting rights.
- (14) Provide that the plan of conversion adopted by the applicant's board of directors may be amended by the board of directors prior to the solicitation of proxies from members to vote on the plan and at any time thereafter with the concurrence of the Commissioner of Banks, and that the conversion may be terminated by the board of directors at any time prior to the meeting of members called to consider the plan of conversion and at any time thereafter with the concurrence of the Commissioner of Banks.
- (15) Establish a time period within which the conversion shall be completed prior to termination. This time period shall not be more than 12 months from the date the members approve the plan of conversion. This time period may be extended an additional 12 months by a plan amendment.
- (16) Provide that all shares of capital stock purchased by directors and executive officers on original issue in the conversion either directly from the applicant (by subscription or otherwise) or from an underwriter of shares, shall be subject to the restriction that such shares shall not be sold for a period of not less than one year following the date of purchase, except in the event of death of the director or executive officer. The Commissioner of Banks may grant permission for the transfer of restricted stock upon a determination that the restriction imposes a substantial personal financial hardship on the individual due to changed unforeseeable circumstances outside the control of the individual.

- (17) Provide that, in connection with shares of capital stock subject to restriction on sale under Item (16) of this Rule:
 - (a) Each certificate for such stock shall bear a legend giving appropriate notice of the applicable restrictions;
 - (b) Instructions shall be issued to the transfer agent for the converted savings institution's capital stock with respect to applicable restrictions on transfer of any restricted stock; and
 - (c) Any shares issued as a stock dividend, stock split, or otherwise with respect to any restricted stock shall be subject to the same restrictions as may apply to the restricted stock.
- (18) Provide that the converting savings institution shall:
 - (a) encourage a market maker to establish and maintain a market for the securities issued in connection with the conversion; and
 - (b) list those shares issued in connection with the conversion on a national or regional securities exchange, or on the NASDAQ system.
- (19) Provide that the expenses incurred in the conversion shall be reasonable.
- (20) Contain no provision that the Commissioner of Banks finds to be inequitable or detrimental to the applicant, its account holders or other savings banks or to be contrary to the public interest.
- (21) Contain no provision that the Commissioner of Banks finds will harm the community and public served by the savings institution.
- (22) Provide that the converting savings bank shall not loan funds or otherwise extend credit on an unsecured basis or upon the security of the savings institution's capital stock to any person to purchase the capital stock of the converting savings institution.
- (23) Provide that the savings institution may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided the contributions do not cause the savings institution to fail to meet its net worth requirements.

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